



STATE ETHICS COMMISSION BULLETIN

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Commission Adjusts to Budget Cuts, Sets Goals

Government budget cuts are a fact of life everywhere during today's tight economy. For the Ethics Commission, the budget has been reduced from \$1,473,550 in Fiscal Year 01 to \$1,265,221 in the current fiscal year, FY 03, a reduction of more than \$200,000 or 14%.

Since July 1, 2001, the staff has been reduced from 25.75 to 19.25 positions. In addition to reductions in administrative and support staff positions, an investigator, two attorneys in the Commission's legal division and the municipal education specialist have been lost because of the substantially reduced budget. For the second year in a row, the Commissioners have voted to forgo their *per diem*. Finally, administrative costs have been significantly reduced. For example, the Commission is distributing its publications electronically to save printing and postage costs and staff training has been eliminated.

The resulting staff reductions and other cuts will have an effect on the services that the Commission will be able to provide to the many state, county and municipal employees who rely on the Commission for guidance and education.

In light of these reductions, for FY

03, the Commission will focus its energy on three goals. First and foremost, the Commission will continue to perform, as effectively and efficiently as possible, its core functions which are to advise, educate and enforce the conflict of interest and financial disclosure laws. The reduced staff will result in fewer educational seminars, longer waits for written opinions and copies of statements of financial interests, slower investigations and abbreviated hours when receptionists will greet visitors and answer phone calls to the Commission.

Second, the Commission is undertaking a comprehensive review and revision of its educational materials including the introduction of new materials addressing a number of issues.

Finally, the Commission will complete its ongoing legislative review and then draft and file legislation consistent with its goal to "promote legislation that helps to clarify, simplify, and further the fundamental values of the conflict and disclosure laws."

These goals will require the Commission and its staff to work smarter and seek workable alternatives to address core functions while they make the difficult transition from 26 to 19 full-time staff positions.

Former Superior Court Justice J. Owen Todd Joins Ethics Commission

Former Superior Court Judge J. Owen Todd, has been appointed to the Ethics Commission by Acting Governor Jane M. Swift. Mr. Todd, a founding partner in Todd & Weld, a Boston law firm that specializes in trial advocacy, practiced law for twenty-eight years at Hale and Dorr before his appointment as a Judge in 1988. He is a fellow of the American College of Trial Lawyers and the President of the Massachusetts Trial Lawyers Association.

Mr. Todd replaces Stephen E. Moore, partner in the law firm Kirkpatrick & Lockhart LLP, who served as a Commissioner from 1997-2001. The Commission and its staff thank Mr. Moore for his devoted service.

"Mr. Todd will be an excellent addition to the Commission," said Ethics Commission Chairman Augustus F. Wagner, Jr. "His depth of experience as a former superior court judge combined

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Ethics Primer: Former Municipal Employees

Periodically, the Bulletin will discuss a particular area of the conflict of interest law. The information provided is educational in nature and should not be considered legal advice. Persons with questions about a specific situation should contact the Ethics Commission for free confidential advice.

Massachusetts General Law c. 268A, the state's conflict of interest law, which governs the conduct of public officials, continues to apply to municipal employees, and in some cases their

partners, even after the employees leave public service. In general, §18 of the conflict law is designed to prevent municipal employees from making official judgments with an eye toward their personal future interests, or from profiting by their participation in particular decisions or controversies after they leave municipal service. Furthermore, the law keeps

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From the Executive Director

"The Ins and the Outs"

The advent of a new administration always brings new challenges to the Ethics Commission because of the significant personnel changes that occur when a new governor takes over.

On one hand, new state officials and managers need advice and education about the application of the conflict law to their activities both on the job and after hours. On the other hand, those officials who are leaving state government and returning to the private sector may encounter situations that require advice and education from the Commission.

In addition, the early retirement incentive program for state employees conducted earlier this year has already resulted in a large number of officials leaving state government. As this edition's primer discusses, the conflict law continues to apply to public officials after they leave public service. Although the primer's focus is on municipal employees, similar rules apply to former state and county employees.

Both public officials who are coming into the public service arena and those who are returning to the private sector are encouraged to contact the Ethics Commission's Legal Division for advice. Despite budget cuts that have reduced the staff of the Commission by one quarter over the past two years, we remain committed to providing free, timely, confidential advice.

Peter Sturges

Commission Members Fall, 2002

Augustus F. Wagner, Jr., Chair
Christine M. Roach, Vice-Chair
Elizabeth J. Dolan
J. Owen Todd

Carol Carson
Editor

Training Now Available at Ethics Commission Offices

Budget cuts curtail municipal seminar program

The Communications and Public Education Division of the Ethics Commission is now offering educational seminars about the conflict of interest law at its Boston office, Room 619, One Ashburton Place. Beginning in September, Commission staff will offer free seminars presented by members of the Commission staff. This is a great opportunity for recently-hired public employees to learn about their obligations under the conflict of interest law.

Currently scheduled seminars:

- Tuesday, November 19, 2002 at 10:00 a.m.,
- Tuesday, December 10, 2002 at 10:00 a.m.,
- Wednesday, January 8, 2002 at 2:00 p.m. and
- Thursday, February 13, 2003 at 2:00 p.m.

Topics covered at these informative sessions will include restrictions on receiving gifts, contracting with the government, acting on matters in which

family members or business associates have a financial interest, leaving public service to work for a company that contracts with the government, and avoiding appearances of conflicts of interest.

The Ethics Commission also offers free educational seminars for municipalities, agencies and public groups. Due to budget cuts, the Commission now requires a guarantee that a minimum of 30 people will attend the seminar and can generally provide only one seminar per municipality. Currently there are a limited number of openings; requests for seminars are honored on a first come, first served basis.

Please call the Commission at 617-727-0060 to enroll in one of the in-house seminars which will be conducted in Room 619, One Ashburton Place, Boston or to organize and sponsor a seminar for a municipality, agency or group in your area.

Educational Material Update Underway

The first stage of a major change to the Commission's educational materials is underway. Over the next year or two, the Commission will be reviewing and revising all of its existing materials and creating new and useful materials that will help public officials and the public to understand the appli-

cation of the conflict law.

The Commission's goal is to reduce the number of publications, and to simplify, clarify and shorten those publications that remain as well as to provide all of its material online. Watch for changes on the Commission's web site at www.mass.gov/ethics.

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with his common sense and practical application of the law will serve the public well."

Mr. Todd is one of five Ethics Commissioners who serve staggered five-year, non-renewable terms. The chairman and two Commissioners are appointed by the governor. The attorney general and the secretary of state each appoint one Commissioner. Only three of the five members and only two of the governor's appointees may be of the same political party.

RECENT ADVISORY OPINION

EC-COI-02-03 - The conflict of interest law generally does not prohibit municipal clerks who are also justices of the peace from solemnizing marriages during their municipal work day on municipal premises, and collecting solemnization fees authorized under G.L. c. 262, §35, as long as their municipal duties are not adversely affected.

Ethics Primer: Former Municipal Employees

former employees from misusing their past friendships and associations within government to derive an unfair advantage for themselves or others. The law does not prohibit former employees from using expertise gained while employed by the municipality.

In certain instances the law also prohibits former employees from referring to their partners matters in which they themselves are prohibited from participating.

Restriction from Participation in Particular Matters

Section 18(a) prohibits former municipal employees from acting as agent or attorney for, or directly or indirectly receiving compensation from, anyone other than their city, town or municipal agency in connection with any particular matter that is of concern to the municipality and

in which they participated as municipal employees. If you participated in a matter, you can

never become involved in that same matter after you leave municipal service for anyone other than the city or town.

Whether former municipal employees are affected by this section is determined by whether they participated, personally and substantially, as municipal employees in a particular matter such as a recommendation, decision, application or contract.

Example: A former municipal employee who made recommendations on and decisions pertaining to regulations enacted in her municipal agency is prohibited from working for a private organization on a challenge to the validity of those regulations.

Example: A former school department employee may not work for a contractor under the same contract in which he participated as a municipal employee.

Example: A former municipal attorney is prohibited from representing a private client in new litigation where the parties, facts, and controversy are

identical to a lawsuit in which she participated as a municipal attorney.

One Year Restriction on Appearance Involving Matters over which Former Employees had Official Responsibility

Section 18(b) focuses on matters over which former municipal employees exercised authority. Section 18(b) prohibits former municipal employees, for one year, from personally appearing before any municipal agency as an agent or attorney for anyone other than the city or town in connection with a particular matter that concerns the municipality if the matter was under their official responsibility within two years prior to their termination from municipal service. In other words, this section operates prospectively as a one year ban on former municipal employees' personal appearances in connection with matters under their authority for the two years prior to their leaving municipal service.

Municipal employees' official responsibilities include particular matters handled by a subordinate, as well as matters in

which they abstained from participation. A personal appearance includes not only the physical appearance of former municipal employees before their former boards or agencies, but also includes telephone calls, correspondence or other communications, such as email, to their former municipal agencies made on behalf of any private client.

Example: An assistant town manager negotiated a three-year contract in July, 2001. The town manager supervising the assistant town manager left her municipal position in September 2002 to take a job with the private firm that was awarded the contract. She is prohibited through September 2003 from making phone calls, writing or appearing on behalf of the firm in connection with the contract, because it was under her official responsibility within two years of her leaving public service. This restriction would also apply to other matters under her responsibility from September 2000 through September 2002.

Restrictions to the Partners of Former Municipal Employees

Section 18(c) extends certain prohibitions

of §18 to the partners of former municipal employees. This section prohibits a partner of a former municipal employee, for one year after the employee has left her municipal position, from knowingly engaging in any activity the former municipal employee is prohibited from doing under §18(a). In other words, if a former municipal employee is prohibited from engaging in certain activity under §18(a), then his partner is similarly prohibited for one year from engaging in the same activity.

The term "partner" for the purposes of §18 has been defined by the Commission to include a member of a group of individuals who by their conduct give the appearance of being partners. The term "partner" is not restricted to those who enter into formal partnership agreements: it may also apply to individuals who join formally or informally in a common business venture. In determining whether a partnership arrangement exists, the Commission looks to the substance of the individuals' relationship rather than the term used to describe that arrangement.

Example: A former town counsel joins a private law firm as a partner. The law firm partners may not, for one year, represent any private clients in connection with a lawsuit which the former town counsel attorney litigated as a municipal employee.

Restrictions on Disclosure of Confidential Information

Finally, former municipal employees should be aware that §23(c) prohibits former municipal employees from accepting employment or engaging in professional activity that will require them to disclose confidential information that they learned in their municipal jobs; and improperly disclosing such non-public information to further their personal interests.

There may be exceptions that would apply to particular situations and the application of the law can be complicated. Please contact the Ethics Commission's Legal Division at (617) 727-0060.

"You cannot tear down privately that which you built up publicly."

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly. Disposition agreements are matters of public record once a case is concluded.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Disposition Agreements

In the Matter of Robert Comiskey

Former Dover Ambulance Squad Administrator Robert Comiskey agreed to pay a civil penalty of \$5,000 for certifying that he, his wife and his son attended emergency medical technician (EMT) training sessions they did not attend. Comiskey also reimbursed the Town of Dover \$854.39, the amount of compensation Comiskey and his family received for training sessions they did not attend. Comiskey admitted violating G.L. c. 268A, §23(b)(3).

According to the Disposition Agreement, Comiskey was responsible for approving and submitting attendance rosters to the state Office of Emergency Management Services (OEMS) as proof that Dover EMTs attended training sessions. EMTs must attend 28 hours of training every two years to maintain certification and are paid an hourly wage for attendance. Comiskey, his wife and son were paid an hourly wage of approximately \$14 for attending six to eight three-hour training sessions each year. Between 1996 and 2001, however, Comiskey, his wife and his son did not attend some training sessions for which they received attendance credit and compensation.

Comiskey surrendered his EMT license and resigned as Ambulance Squad Administrator in June 2001 after an investigation was conducted by OEMS.

In the Matter of June Lemire Southbridge Housing Authority

("SHA") Executive Director June Lemire admitted violating the conflict law by recommending that her boyfriend, George DiBonaventura, be hired as part-time clerk of the works for a SHA renovations project. Lemire paid a civil penalty of \$500.

According to the Disposition Agreement, the architect for the renovation project contacted Lemire for a reference concerning Di Bonaventura, who worked for the SHA as a full-time maintenance supervisor from 1983 until his retirement in late 1999. Lemire spoke favorable about DiBonaventura but did not disclose to the architect that he was her boyfriend. Lemire also did not disclose to her appointing authority, the SHA, that she recommended to the architect that DiBonaventura be hired.

Lemire admitted that she violated G.L. c. 268A, §23(b)(3) by recommending her boyfriend to the architect.

In the Matter of Thomas Lussier

Massachusetts Teachers Retirement Board (MTRB) Executive Director Thomas Lussier admitted violating G.L. c. 268A, the state's conflict of interest law, and agreed to pay a \$5,000 civil penalty to resolve allegations that he improperly used a MTRB corporate credit card for personal purchases.

According to the Disposition Agreement, Lussier admitted that his use of the MTRB credit card to charge more than \$3,000 in personal purchases over a five-year period from 1997 to early 2001 violated §23(b)(2) of the conflict law.

According to the Disposition Agreement, Lussier asserted that legitimate

business expenses for which he was entitled to, but did not seek, reimbursement would offset his personal purchases and that he intended to make a complete reconciliation. "The amount of the unreimbursed business expenses, however, was significantly less than the charged personal expenses..." the Agreement states. Lussier reimbursed the MTRB \$3,012.77 for personal expenses plus \$504.50 in interest for a total of \$3,517.27 after the media reported on the matter. He reimbursed an additional \$114.62 following an investigation by the State Auditor. The MTRB has eliminated agency credit cards.

In the Matter of Diane Wong

Former MBTA Assistant General Manager for Organizational Diversity Diane Wong admitted violating the conflict of interest law by awarding Praxis Consultants & Trainers, a company in which her son-in-law was one of three principals, contracts totalling \$40,000. Wong paid a civil penalty of \$5,000.

According to the Disposition Agreement, Wong unilaterally decided to hire Praxis and one other company out of a field of 50 firms seeking contracts to provide diversity training to MBTA employees. Praxis executed three contracts with the MBTA, one in May 1998 for \$10,000, another in September 1998 for \$10,000 and a third in late 2000 for \$20,000. Praxis provided training under the first two contracts but the final contract was canceled by the MBTA and payment was withheld.

Wong admitted that her actions violated G.L. c. 268A, §§23(b)(2) and 23(b)(3).

Wong worked for the MBTA between December 1997 and June 2002.

SECTION BY SECTION: WHAT THE CONFLICT LAWS SAYS

G.L. c. 268A

- Section 23(b)(2) prohibits a public employee from using his or her position to obtain for the employee or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties.